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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Paul C. Blank

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12/08/2006

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EXAMINER

NORDMEYER, PATRICIA L

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 12/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/804,953	<b>Applicant(s)</b> BLANK ET AL.	
	<b>Examiner</b> Patricia L. Nordmeyer	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 05 October 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Withdrawn Rejections***

1. The 35 U.S.C. 102(b) rejection of claim 31 as anticipated by Slagsvol (USPN 4,884,826) in the office action dated July 24, 2006 is withdrawn due to Applicant's amendments in the paper dated October 5, 2006.

2. The 35 U.S.C. 103(a) rejection of claims 19 – 25 and 27 – 29 over Smith (USPN 5,578,352) in view of Slagsvol (USPN 4,884,826) in the office action dated July 24, 2006 is withdrawn due to Applicant's amendments in the paper dated October 5, 2006.

3. The 35 U.S.C. 103(a) rejection of claim 26 over Smith (USPN 5,578,352) in view of Slagsvol (USPN 4,884,826) and Lane (USPN 2,170,147) in the office action dated July 24, 2006 is withdrawn due to Applicant's amendments in the paper dated October 5, 2006.

### ***Repeated Rejections***

4. The 35 U.S.C. 103(a) rejection of claims 1 – 9, 11 – 15, 17 and 18 over Smith (USPN 5,578,352) in view of Slagsvol (USPN 4,884,826) in the office action dated July 24, 2006 is repeated as Applicant's arguments in the paper dated October 5, 2006 are found to be unpersuasive. The rejection is repeated below for Applicant's convenience.

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Smith discloses a label roll (Column 1, lines 40 – 43) comprising web (Column 2, lines 54 – 58) that is continuous along said running axis and imperforate (Column 3, lines 6 and 7) having a front surface and an opposite back surface wound longitudinally along a running axis (Figure 2, #13 and 14) in a roll (Column 1, lines 40 – 43), said back surface including a plurality of non continuous adhesive patches (Column 3, line 60 to Column 4, line 1; Column 3, lines 42 – 46) aligned in a column along a running axis of said web in a minor area of said back surface with the remaining area of said back surface being devoid of adhesive (Figure 2, #34 and 35; Column 4, lines 16 – 18) and including adhesive-free spaces transversely bridging said web longitudinally between said adhesive patches to isolate said patches in sequential labels and permit cutting of said web in said adhesive-free spaces to separate said labels (Column 3, line 60 to Column 4, line 1; Column 3, lines 42 – 46, whereby the adhesive-free areas are formed in between the discontinuous strips) and said front surface including a release strip extending along said running axis behind said column of adhesive patches and laminated to said patches in successive layers in said roll (Column 3, lines 42 – 52) with said patches being sized for bonding an individual label to a surface (Figure 3, #11) in claims 1 and 3. With regard to claims 4 – 7, the patches are aligned along said and edge of said web (Figure 2, #34 and 35), have straight edges aligned parallel and transversely with said running axis forming a rectangular shaped area (Figure 3) and are elongate along said running axis (Figure 2 and 3). The web further includes corresponding index marks between adjacent patches to define corresponding labels (Figure 3, #19) as in claims 8 and 15. With regard to claims 17 and 18, the release strip is narrow to conform in width with said column of adhesive patches thereby leaving the remainder of the web front side devoid (Column 3, lines 48 – 42) and is made from a silicone coating

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(Column 3, line 33). However, Smith fails to disclose the patches being isolated on one side only of the transverse middle, being aligned on one lateral edge of the web and closer thereto than an opposite edge of said web, the patches have arcuate edges extending transversely with said running axis, convex leading edges with convex trailing edges connected by straight edges, ovals with major axes disposed parallel to the running axis, and the patches being elongate transverse to said running axis.

Slagsvol teach disclose the patches being isolated on one side only of the transverse middle (Figure 6, #2f; Column 2, lines 45 – 48), being aligned on one lateral edge of the web and closer thereto than an opposite edge of said web (Figure 6, #2f; Column 2, lines 45 – 48) for the purpose of forming a paper that is easily and rapidly applied to a surface (Column 1, lines 43 – 44).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a single adhesive patch isolated on one side only of the transverse middle in Smith in order to form a paper that is easily and rapidly applied to a surface as taught by Slagsvol.

Regarding the patches having arcuate edges extending transversely with said running axis, convex leading edges with convex trailing edges connected by straight edges, ovals with major axes disposed parallel to the running axis, it is well settled that a particular shape of a prior invention carries no patentable weight unless the applicant can demonstrate that the new shape

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provides significant unforeseen improvements to the invention. See *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947), *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). In the instant case, the application does not indicate any new, significant attributes of the invention due to its shape, which would have been unforeseen to one of ordinary skill in the art. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to change the shape of the adhesive patch as Smith teaches a variety of shapes being used (Column 3, line 60 to Column 4, line 1; Column 3, lines 42 – 46).

5. The 35 U.S.C. 103(a) rejection of claims 10 and 16 over Smith (USPN 5,578,352) in view of Slagsvol (USPN 4,884,826) and Lane (USPN 2,170,147) in the office action dated July 24, 2006 is repeated as Applicant's arguments in the paper dated October 5, 2006 are found to be unpersuasive. The rejection is repeated below for Applicant's convenience.

Smith, as modified with Slagsvol, discloses the claimed roll except for the web being devoid of index marks and the release strip covering said web front side in full.

Lane teaches the patches of adhesive (Figure 1, #11; Page 2, Column 1, lines 33 – 38), the release strip covering said web front in full (Page 2, Column 1, lines 44 – 51) and devoid of index marks (Figure 1) for the purpose of being able to cut each band from a coated sheet without gumming the cutting knife and with fusing together the edges of the resulting bands (Page 3, Column 1, lines 15 – 20).

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It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a single adhesive patch in an elongate shape in the modified Smith in order to cut each band from a coated sheet without gumming the cutting knife and with fusing together the edges of the resulting bands as taught by Lane since the modified Smith discloses the use of discontinuous strips (Column 3, line 60 to Column 4, line 1; Column 3, lines 42 – 46).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 19 – 25, 27 – 29 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (USPN 5,578,352) in view of Slagsvol (USPN 4,884,826).

Smith discloses a label roll (Column 1, lines 40 – 43) comprising web (Column 2, lines 54 – 58) that is continuous along said running axis and imperforate (Column 3, lines 6 and 7) having a front surface and an opposite back surface wound longitudinally along a running axis (Figure 2, #13 and 14) in a roll (Column 1, lines 40 – 43), said back surface including a plurality of non continuous adhesive patches (Column 3, line 60 to Column 4, line 1; Column 3, lines 42 – 46) aligned in a column along a running axis of said web in a minor area of said back surface with the remaining area of said back surface being devoid of adhesive (Figure 2, #34 and 35;

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Column 4, lines 16 – 18) and including adhesive-free spaces transversely bridging said web longitudinally between said adhesive patches to isolate said patches in sequential labels and permit cutting of said web in said adhesive-free spaces to separate said labels (Column 3, line 60 to Column 4, line 1; Column 3, lines 42 – 46, whereby the adhesive-free areas are formed in between the discontinuous strips) and said front surface including a release strip extending along said running axis behind said column of adhesive patches and laminated to said patches in successive layers in said roll (Column 3, lines 42 – 52) with said patches being sized for bonding an individual label to a surface (Figure 3, #11) in claims 19 and 31. With regard to claims 23 and 24, the patches are aligned along said edge of said web (Figure 2, #34 and 35), have straight edges aligned parallel and transversely with said running axis forming a rectangular shaped area (Figure 3) and are elongate along said running axis (Figure 2 and 3). The web further includes corresponding index marks between adjacent patches to define corresponding labels (Figure 3, #19) as in claims 21 and 25. With regard to claims 22 and 29, the release strip is narrow to conform in width with said column of adhesive patches thereby leaving the remainder of the web front side devoid (Column 3, lines 48 – 42) and is made from a silicone coating (Column 3, line 33). As in claim 28, each of said labels has a plurality of said adhesive patches (Figure 2, #34 and 35). However, Smith fails to disclose the patches being isolated on one side only of the transverse middle, being aligned on one lateral edge of the web and closer thereto than an opposite edge of said web, the patches have arcuate edges extending transversely with said running axis, convex leading edges with convex trailing edges connected by straight edges, ovals with major axes disposed parallel to the running axis, and the patches being elongate transverse to said running axis.



Slagsvol teach disclose the patches being isolated on one side only of the transverse middle (Figure 6, #2f; Column 2, lines 45 – 48), being aligned on one lateral edge of the web and closer thereto than an opposite edge of said web (Figure 6, #2f; Column 2, lines 45 – 48) for the purpose of forming a paper that is easily and rapidly applied to a surface (Column 1, lines 43 – 44).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a single adhesive patch isolated on one side only of the transverse middle in Smith in order to form a paper that is easily and rapidly applied to a surface as taught by Slagsvol.

Regarding the patches having arcuate edges extending transversely with said running axis, convex leading edges with convex trailing edges connected by straight edges, ovals with major axes disposed parallel to the running axis, it is well settled that a particular shape of a prior invention carries no patentable weight unless the applicant can demonstrate that the new shape provides significant unforeseen improvements to the invention. See *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947), *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). In the instant case, the application does not indicate any new, significant attributes of the invention due to its shape, which would have been unforeseen to one of ordinary skill in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to change the shape of the adhesive patch as Smith teaches a variety of shapes being used (Column 3, line 60 to Column 4, line 1; Column 3, lines 42 – 46).

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With regard to the limitations of “for use in a printer having a cutting blade” and “permit transverse cutting of said web said blade” in claim 19, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The language of the claim is directed towards the structure of the label roll and not how the label roll is being used in combination with the printer or the cutting blade.

With regard to the limitations of “said printer includes an index sensor” and “datable by said sensor” in claim 25, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The language of the claim is directed towards the structure of the label roll and not how the label roll is being used in combination with the printer that includes a index sensor.

8. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (USPN 5,578,352) in view of Slagsvol (USPN 4,884,826) as applied to claims 19 – 25, 27 – 29 and 31 above, and further in view of Lane (USPN 2,170,147).

Smith, as modified with Slagsvol, discloses the claimed roll except for the release strip covering said web front side in full.

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Lane teaches the patches of adhesive (Figure 1, #11; Page 2, Column 1, lines 33 – 38), the release strip covering said web front in full (Page 2, Column 1, lines 44 – 51) for the purpose of being able to cut each band from a coated sheet without gumming the cutting knife and with fusing together the edges of the resulting bands (Page 3, Column 1, lines 15 – 20).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided a single adhesive patch in an elongate shape in the modified Smith in order to cut each band from a coated sheet without gumming the cutting knife and with fusing together the edges of the resulting bands as taught by Lane since the modified Smith discloses the use of discontinuous strips (Column 3, line 60 to Column 4, line 1; Column 3, lines 42 – 46).

### *Response to Arguments*

9. Applicant's arguments filed October 5, 2006 with regard to claims 1 – 28 and 31 have been fully considered but they are not persuasive.

In response to Applicant's arguments with regard to the 102(b) rejection of claim 31 as anticipated by Slagsvol, the rejection has been withdrawn due to amendments presented by the Applicant. Please see the new rejection above of claim 31 over Smith in view of Slagsvol.

In response to applicant's argument that Slagsvol is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be

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reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, a label, as defined by www.webster.com, is “a slip (as of paper or cloth) inscribed and affixed to something for identification or description”. Slagsvol becomes a label the moment a mark is made on the surface of tracing paper and the paper is stuck to the surface of an object. Therefore, Slagsvol is not considered non-analogous art based on the definition of a label.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., specialty labels used in the fast food industry) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to Applicant's argument that Smith fails to disclose a plurality of discrete adhesive patches arranged in a column, Smith clearly states that the adhesive may have patterns or be applied in a continuous strip (Column 3, line 66 to Column 4, line 6). The pattern of adhesive varies as it does for the silicone patterns, wherein the patterns are chosen from discontinuous strips, dots a series of polygons or a wide variety of patterns (Column 3, lines 41 – 46). The shapes of the adhesive is described using the same description of the silicone patterns in the specification of the prior art of Smith as shown by the statement “Also, while continuous

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strips 34, 35 are desired, other patterns can be applied in the same as indicated for the silicone patterns 27, 28”.

In response to Applicant’s argument that the Examiner has failed to identify any problem in Smith for which any solution in Slagsvol would be relevant, the Examiner clearly states that the Smith reference fails to disclose the patches being isolated on one side only of the transverse middle, being aligned on one lateral edge of the web and closer thereto than an opposite edge of said web, the patches have arcuate edges extending transversely with said running axis, convex leading edges with convex trailing edges connected by straight edges, ovals with major axes disposed parallel to the running axis, and the patches being elongate transverse to said running axis. Slagsvol teaches that it is known to have adhesive patches on both edges of a substrate (Figure 5) or just on a single side (Figure 6). Therefore, it would have been obvious to one of ordinary skill in the art to place an adhesive only on one side of the substrate for the purpose of controlling the adherence of the substrate to a surface.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). A label, as defined by [www.webster.com](http://www.webster.com), is “a slip (as of paper

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or cloth) inscribed and affixed to something for identification or description”. Slagsvol becomes a label the moment a mark is made on the surface of tracing paper and the paper is stuck to the surface of an object. Slagsvol teaches that it is known to have adhesive patches on both edges of a substrate (Figure 5) or just on a single side (Figure 6). Therefore, it would have been obvious to one of ordinary skill in the art to place an adhesive only on one side of the substrate for the purpose of controlling the adherence of the substrate to a surface.

With regard to Applicant’s argument that the Examiner has failed to consider the claims and their features as whole with regard to the shapes and advantages of the adhesive, the Applicant has provided no evidentiary support of the unexpected results with regard to the shape or placement of the adhesive. Therefore, this is not deemed persuasive since arguments cannot take the place of evidence in the record to overcome a rejection. See MPEP 2145. It would have been obvious to one of ordinary skill in the art at the time of the invention to change the shape of the adhesive patch as Smith teaches a variety of shapes being used (Column 3, line 60 to Column 4, line 1; Column 3, lines 42 – 46).

In response to Applicant’s argument that the cited area of the prior art applies to the silicone patterns and not the adhesive, the pattern of adhesive varies as it does for the silicone patterns, wherein the patterns are chosen from discontinuous strips, dots a series of polygons or a wide variety of patterns (Column 3, lines 41 – 46). The shapes of the adhesive is described using the same description of the silicone patterns in the specification of the prior art of Smith as

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shown by the statement “Also, while continuous strips 34, 35 are desired, other patterns can be applied in the same as indicated for the silicone patterns 27, 28”.

In response to Applicant’s argument that the Examiner’s use of Lane disregards that the lines of perforations are just as much the equivalent of index marks as the registration marks in Smith, the Applicant’s specification discloses index marks as “various configurations, such as a black line which extends across the full width of the web” (Paragraph 0039) and “the index mark is disposed on the surface and daces downwardly toward the index sensor” (Paragraph 0040). Bases of the description in the Applicant’s specification, the perforations of Lane cannot be considered index marks as perforations extend through the width of the substrate instead of being located on the surface. Nor is the perforation only a mark on one surface of the substrate. It would have been obvious to one of ordinary skill in the art to provide a continuous label without index marks since Lane teaches it is known to have a continuous label that allows separation of individual labels (Figures and 5) without the assistance of index marks on the surface of the substrate.

With regard to the full surface release strip being overlooked by the Examiner, Lane clearly teaches the use of a release strip covering said web in full (Page 2, Column 1, lines 44 – 51) for the purpose of allowing weak bonding of a gummed section, adhesive section, while in a rolled form (Page 2, Column 1, lines 46 – 51). It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the full release

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strip in the modified Smith in order to store the label in a roll formation without the adhesive bonding to the underlying surfaces as taught by Lane.

### *Conclusion*

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (571) 272-1496. The examiner can normally be reached on Mon.-Thurs. from 10:00-7:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Patricia L. Nordmeyer  
Examiner  
Art Unit 1772

*pln*  
pln

*Nasser Ahmad*  
NASSER AHMAD  
PRIMARY EXAMINER  
12/5/06